

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Anthony McKinney,

Plaintiff

v.

Jeremy Bean, et al.,

Defendants

Case No. 2:24-cv-00775-CDS-BNW

## Order Dismissing and Closing Case

Plaintiff Anthony McKinney brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. ECF No. 1-1. On May 16, 2024, the magistrate judge ordered McKinney to either pay the full \$405 filing fee or file a fully complete application to proceed *in forma pauperis* by July 15, 2024. ECF No. 3. That deadline expired without payment of the filing fee or filing of an *in forma pauperis* application by McKinney, and his mail from the Court is being returned as undeliverable. See ECF No. 4.

**I. Discussion**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, I must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

The first two factors, the public’s interest in expeditiously resolving this litigation and the court’s interest in managing its docket, weigh in favor of dismissal of McKinney’s claims. The third

1 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury  
2 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting  
3 an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy  
4 favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

5 The fifth factor requires me to consider whether less drastic alternatives can be used to correct  
6 the party's failure that brought about the court's need to consider dismissal. *See Yourish v. Cal. Amplifier*,  
7 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has  
8 disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4  
9 (9th Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally dismissing a  
10 case, but must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424  
11 (9th Cir. 1986). Because the court must collect fees from parties initiating civil actions, and this action  
12 cannot realistically proceed without the ability for the court and the defendants to send McKinney case-  
13 related documents, filings, and orders, the only alternative is to enter a second order setting another  
14 deadline. But without an updated address, the likelihood that the second order would even reach  
15 McKinney is low, so issuing a second order will only delay the inevitable and further squander the  
16 court's finite resources. Setting another deadline is not a meaningful alternative given these  
17 circumstances. So the fifth factor favors dismissal.

## 18 II. Conclusion

19 Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
20 dismissal. It is therefore ordered that this action is dismissed without prejudice based on McKinney's  
21 failure to either pay the filing fee or apply for *in forma pauperis* status in compliance with the court's May  
22 16, 2024, order. The Clerk of Court is directed to enter judgment accordingly and close this case. No  
23 other documents may be filed in this now-closed case. If McKinney wishes to pursue his claims, he must  
24 file a complaint in a new case, either pay the filing fee or apply for *in forma pauperis* status, and provide the  
25 court with his current address.

26 Dated: September 6, 2024

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Cristina D. Silva  
United States District Judge